

## § 231.2

those financial institutions specifically defined in the Act.

### § 231.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236), as amended.

(b) *Affiliate*, with respect to a person, means any other person that controls, is controlled by, or is under common control with the person.

(c) *Financial contract* means a qualified financial contract as defined in section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)), as amended, except that a forward contract includes a contract with a maturity date two days or less after the date the contract is entered into (i.e., a "spot" contract).

(d) *Financial market* means a market for a financial contract.

(e) *Gross mark-to-market positions* in one or more financial contracts means the sum of the absolute values of positions in those contracts, adjusted to reflect the market values of those positions in accordance with the methods used by the parties to each contract to value the contract.

(f) *Person* means any legal entity, foreign or domestic, including a corporation, unincorporated company, partnership, government unit or instrumentality, trust, natural person, or any other entity or organization.

### § 231.3 Qualification as a financial institution.

(a) A person qualifies as a financial institution for purposes of sections 401-407 of the Act if it represents, orally or in writing, that it will engage in financial contracts as a counterparty on both sides of one or more financial markets and either—

(1) Had one or more financial contracts of a total gross dollar value of at least \$1 billion in notional principal amount outstanding on any day during the previous 15-month period with counterparties that are not its affiliates; or

(2) Had total gross mark-to-market positions of at least \$100 million (aggregated across counterparties) in one

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or more financial contracts on any day during the previous 15-month period with counterparties that are not its affiliates.

(b) If a person qualifies as a financial institution under paragraph (a) of this section, that person will be considered a financial institution for the purposes of any contract entered into during the period it qualifies, even if the person subsequently fails to qualify.

(c) If a person qualifies as a financial institution under paragraph (a) of this section on March 7, 1994, that person will be considered a financial institution for the purposes of any outstanding contract entered into prior to March 7, 1994.

[Reg. EE, 59 FR 4784, Feb. 2, 1994, as amended at 61 FR 1274, Jan. 19, 1996]

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## § 250.141

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AUTHORITY: 12 U.S.C. 78, 248(i), 371c(f) and 371c-1(e).

SOURCE: 33 FR 9866, July 10, 1968, unless otherwise noted.

### INTERPRETATIONS

#### § 250.141 Member bank purchase of stock of "operations subsidiaries."

(a) The Board of Governors has reexamined its position that the so-called "stock-purchase prohibition" of section 5136 of the Revised Statutes (12 U.S.C. 24), which is made applicable to member State banks by the 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335), forbids the purchase by a member bank "for its own account of any shares of stock of any corporation" (the statutory language), except as specifically permitted by provisions of Federal law or as comprised within the concept of "such incidental powers as shall be necessary to carry on the business of banking", referred to in the first sentence of paragraph "Seventh" of R.S. 5136.

(b) In 1966 the Board expressed the view that said incidental powers do not permit member banks to purchase stock of "operations subsidiaries"—that is, organizations designed to serve, in effect, as separately-incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. (See 1966 Federal Reserve Bulletin 1151.)

(c) The Board now considers that the incidental powers clause permits a bank to organize its operations in the manner that it believes best facilitates the performance thereof. One method of organization is through departments; another is through separate incorporation of particular operations. In other words, a wholly owned subsidiary corporation engaged in activities that the bank itself may perform is simply a convenient alternative organizational arrangement.

(d) Reexamination of the apparent purposes and legislative history of the stock-purchase prohibition referred to above has led the Board to conclude that such prohibition should not be interpreted to preclude a member bank from adopting such an organizational arrangement unless its use would be inconsistent with other Federal law, either statutory or judicial.

(e) In view of the relationship between the operation of certain subsidiaries and the branch banking laws, the Board has also reexamined its rulings on what constitutes "money lent" for the purposes of section 5155 of the Revised Statutes (12 U.S.C. 36), which provides that "The term *branch* \* \* \* shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business \* \* \* at which deposits are received, or checks paid, or money lent."<sup>1</sup>

<sup>1</sup>In the Board's judgment, the statutory enumeration of three specific functions that establish branch status is not meant to be exclusive but to assure that offices at which any of these functions is performed are regarded as branches by the bank regulatory authorities. In applying the statute the emphasis should be to assure that significant banking functions are made available to the

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(f) The Board noted in its 1967 interpretation that offices that are open to the public and staffed by employees of the bank who regularly engage in soliciting borrowers, negotiating terms, and processing applications for loans (so-called *loan production offices*) constitute branches. (1967 Federal Reserve Bulletin 1334.) The Board also noted that later in that year it considered the question whether a bank holding company may acquire the stock of a so-called *mortgage company* on the basis that the company would be engaged in “furnishing services to or performing services for such bank holding company or its banking subsidiaries” (the so-called *servicing exemption* of section 4(c)(1)(C) of the Bank Holding Company Act; 12 U.S.C. 1843). In concluding affirmatively, the Board stated that “the appropriate test for determining whether the company may be considered as within the servicing exemption is whether the company will perform as principal any banking activities—such as receiving deposits, paying checks, extending credit, conducting a trust department, and the like. In other words, if the mortgage company is to act merely as an adjunct to a bank for the purpose of facilitating the bank’s operations, the company may appropriately be considered as within the scope of the servicing exemption.” (1967 Federal Reserve Bulletin 1911; 12 CFR 225.122.)

(g) The Board believes that the purposes of the branch banking laws and the servicing exemption are related. Generally, what constitutes a branch does not constitute a servicing organization and, vice versa, an office that only performs servicing functions should not be considered a branch. (See 1958 Federal Reserve Bulletin 431, last paragraph; 12 CFR 225.104(e).) When viewed together, the above-cited interpretations on loan production offices and mortgage companies represent a departure from this principle. In reconsidering the laws involved, the Board has concluded that a test similar to that adopted with respect to the servicing exemption under the Bank Holding Company Act is appropriate for use

in determining whether or not what constitutes *money [is] lent* at a particular office, for the purpose of the Federal branch banking laws.

(h) Accordingly, the Board considers that the following activities, individually or collectively, do not constitute the lending of money within the meaning of section 5155 of the revised statutes: Soliciting loans on behalf of a bank (or a branch thereof), assembling credit information, making property inspections and appraisals, securing title information, preparing applications for loans (including making recommendations with respect to action thereon), soliciting investors to purchase loans from the bank, seeking to have such investors contract with the bank for the servicing of such loans, and other similar agent-type activities. When loans are approved and funds disbursed solely at the main office or a branch of the bank, an office at which only preliminary and servicing steps are taken is not a place where *money [is] lent*. Because preliminary and servicing steps of the kinds described do not constitute the performance of significant banking functions of the type that Congress contemplated should be performed only at governmentally approved offices, such office is accordingly not a branch.

(i) To summarize the foregoing, the Board has concluded that, insofar as Federal law is concerned, a member bank may purchase for its own account shares of a corporation to perform, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly. Also, a member bank may establish and operate, at any location in the United States, a *loan production office* of the type described herein. Such offices may be established and operated by the bank either directly, or indirectly through a wholly-owned subsidiary corporation.

(j) This interpretation supersedes both the Board’s 1966 ruling on *operations subsidiaries* and its 1967 ruling on *loan production offices*, referred to above.

(12 U.S.C. 24, 36, 321, 335)

public only at governmentally authorized offices.

[33 FR 11813, Aug. 21, 1968; 43 FR 53414, Nov. 16, 1978]